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**RE: Ex parte Appeal Serial No. 78/132209 - ALLIED ELECTRONICS**

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I am forwarding the copy of my appeal brief that was electronically filed on November 4, 2004 via ESTTA, along with the ESTTA receipt and confirming e-mail.

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Regards,  
Eric

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	78132209
<b>Applicant</b>	Allied Electronics Inc.
<b>Correspondence Address</b>	Eric Von Vorys Shulman Rogers Gandal Pordy & Ecker, P.A. 11921 Rockville Pike, Suite 300 Rockville, MD 20852  evonvorys@srgpe.com
<b>Submission</b>	Appeal Brief
<b>Attachments</b>	AlliedAppealBriefFinal.pdf ( 37 pages )
<b>Filer's Name</b>	Eric J. von Vorys
<b>Filer's e-mail</b>	evonvorys@srgpe.com
<b>Signature</b>	/EricJvonVorys/
<b>Date</b>	11/04/2004

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Tracking No: ESTTA18662

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding: 78132209  
Applicant: Allied Electronics Inc.  
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Submission: Appeal Brief

Attachments: AlliedAppealBriefFinal.pdf ( 37 pages )

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:	:	
	:	
ALLIED ELECTRONICS, INC.	:	
	:	
Serial No.: 78/132209	:	Examining Attorney Cynthia Sloan
	:	Law Office 116
Filed: May 30, 2002	:	
	:	
Mark: ALLIED ELECTRONICS	:	

**EX PARTE APPEAL BRIEF IN FAVOR OF REGISTRATION**

**INTRODUCTION**

This application stands rejected under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), based on Registration No. 568,267 ALLIED and design ("Registration"). The Examining Attorney contends that the Registration and instant application so resemble each other as to be likely, when used in connection with their identified goods, to cause confusion, or to cause mistake, or to deceive. Applicant hereby appeals the Examining Attorney's final refusal to register the instant mark and respectfully requests that the Trademark Trial and Appeal Board ("Board") reverse the Examining Attorney's decision.

**FACTS**

1. On May 30, 2002, Applicant, Allied Electronics, Inc., applied to register the mark ALLIED ELECTRONICS for:

"hand tools, namely hand-held crimpers, punches, wire cutters, wrenches, lead cutters, pliers, wire strippers, extractors for electrical and computer components, screw drivers, tweezers, punchdown tools, blow torches and metal vices."

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2. The application is based on use in commerce and alleges first use dates as early as 1929.

3. On October 17, 2002, the Examining Attorney refused registration of the instant application based on the Registration covering:

“hand- and machine-tools; namely, files, drill bits, trowels, screwdrivers, pliers, wrenches, chisels, punches, saws, snips and shears, scrapers, hammers, taps and dies.”

The Examining Attorney also requested Applicant disclaim the term ELECTRONICS apart from the mark as shown.

4. On March 5, 2003, Applicant disclaimed ELECTRONICS, as requested, and argued against the refusal to register. Among other things, Applicant argued that: (i) the marks differed visually, orally, and in significance; (ii) the respective goods differ and are sold in completely different channels of trade; (iii) the respective marks were weak based on third-party marks; (iv) both marks coexisted for over 50 years without confusion, and (v) the purchasers, who were sophisticated, could easily differentiate between the marks.

5. On May 14, 2003, the Examining Attorney issued a second Office Action maintaining the Section 2(d) refusal and made the refusal Final.

6. On October 27, 2003, Applicant filed a Notice of Appeal with the Board and simultaneously filed a Request for Reconsideration of the Examining Attorney's decision. In its Request for Reconsideration, Applicant amended its identification of goods to remove all overlapping tools between the instant application and the Registration and narrowed the identification as follows:

“hand tools for use in the electronics' industry, namely, hand-held crimpers, wire cutters, lead cutters, wire strippers, cable cutters, cable strippers, extractors for electrical and computer components, kits for electronic contact

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insertion and removal, tweezers, fuse pullers, punch down tools, blow torches, and metal vises.

7. On January 16, 2004, the Board suspended the appeal and remanded the case back to the Examining Attorney for consideration of the amendment to the goods stating "if the problems with the proposed identification can be resolved, the Examining Attorney is encouraged to contact the applicant . . . in an attempt to do so." See Remand to Examining Attorney dated Jan. 16, 2004.

8. The Examining Attorney did not contact the Applicant and on February 25, 2004, the Examining Attorney issued a third Office Action refusing the new identification of goods because it contained "cable cutters, cable strippers, kits for electronic contact insertion and removal and fuse pullers," which (i) were not identified in the original application, and (ii) expanded the originally identified goods.

9. On June 3, 2004, Applicant submitted a revised identification that deleted the allegedly expanded goods.

10. On July 15, 2004, the Examining Attorney issued a fourth Office Action maintaining the Section 2(d) Final refusal, contending that the goods in the Registration could encompass Applicant's goods because the Registration's goods are broadly defined. In order to demonstrate that the goods of the parties are related, the Examining Attorney attached 32 putative registrations wherein the mark was allegedly contemporaneously registered in connection with Applicant's and Registrant's goods. Applicant will address each of the 32 registered marks in its argument and show that they form no support for the Examining Attorney's position.

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## I. ARGUMENT

Applicant incorporates in this Appeal Brief all of the arguments, exhibits, and evidence submitted with its responses to prior Office Actions and its Petition for Reconsideration.

As stated by the Examining Attorney in the Office Action dated May 14, 2003, the likelihood of confusion between two marks must be determined in a two-step analysis. First, the marks must be compared for similarities in appearance, sound and commercial impression. In re. E.I. du Pont de Nemours & Co., 177 USPQ 563, 567 (CCPA 1973). Second, the goods or services of the respective marks must be compared to determine if they are related or if the activities surrounding their marketing are such that confusion of origin is likely. Id. Applicant continues to maintain that after analyzing both steps, there can be no likelihood of confusion between the Registration and the instant mark.

### 1. **Sound, Appearance, Connotation and Commercial Impression**

Applicant reiterates that when comparing marks, they must be considered in their entireties. Because marks must be considered as the public views them, in their entireties, likelihood of confusion cannot be predicated on dissection of a mark, that is, only one part of a mark. Opryland USA, Inc. v. Great Am. Music Show, Inc., 23 USPQ2d 1471, 1473 (Fed. Cir. 1992). See also Estate of P.D. Beckwith, Inc. v. Comm'r of Patents, 252 U.S. 528, 545-46 (1920) ("commercial impression of a trademark is derived from it as a whole, not from elements separated and considered in detail"); Spice Islands, Inc. v. Frank Tea & Spice Co., 505 F.2d 1293, 1295-96 (CCPA 1974) (improper to ignore portion of composite mark); J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 23:41 at 23-123 (4<sup>th</sup> ed. 2002) ("Conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their component parts for comparison."). Under this anti-dissection



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rule, when determining likelihood of confusion it is improper to focus solely on an individual word and ignore the other elements of the mark. Franklin Mint Corp. v. Master Mfg. Co., 2112 USPQ 233, 234 (CCPA 1981); Sun-Fun Prods., Inc. v. Suntan Research & Dev., Inc., 213 USPQ 91 (5<sup>th</sup> Cir. 1981). A focus upon the most prominent feature of a mark without considering the rest of the mark is a violation of the anti-dissection rule. Massey Junior Coll., Inc. v. Fashion Inst. of Tech., 181 USPQ 272, 273-74 (CCPA 1974).

This includes a comparison of all the words in the marks, even those terms that are disclaimed. Disclaimers have no legal effects on likelihood of confusion analyses because "the public is unaware of what words have been disclaimed during prosecution of the trademark application at the PTO." Specialty Brands, Inc. v. Coffee Bean Distribs., Inc., 748 F.2d 669, 672 (Fed. Cir. 1984); Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 1570 (Fed. Cir. 1983).

Applicant respectfully submits again that the Examining Attorney failed to take into account the overall differences between the marks in their entireties. The Registration is for the word ALLIED in a specific typeface inscribed in a rectangle design. Applicant's mark is the words ALLIED ELECTRONICS. The Examining Attorney's focus has been merely on the words of similarity, namely ALLIED, instead of also comparing the differences between the marks. The marks in question are clearly visually different and this difference must be considered in determining likelihood of confusion. In re Electrolyte Labs, Inc., 16 USPQ2d 1239, 1240 (Fed. Cir. 1990) ("The nature of stylized letter marks is that they partake of both visual and oral indicia, and both must be weighed in the context in which they occur.") (citing Georgia-Pacific Corp. v. Great Plains Bag Co., 614 F.2d 757, 760 (CCPA 1980). See also In re

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TSI Brands Inc., 67 USPQ2d 1657, 1662 (TTAB 2002) (mark's stylized letters form a design element that has to be considered in likelihood of confusion analysis).

Moreover, it is recognized that confusion is not automatically likely if an applicant has a mark that contains in part the whole of another's mark. The Conde Nast Pubs., Inc. v. Miss Quality, Inc., 184 USPQ 422, 425 (CCPA 1975) (COUNTRY VOGUES not confusingly similar to VOGUE); In re Merchandising Motivation, Inc., 184 USPQ 364 (TTAB 1974) (MMI MENSWEAR not confusingly similar to MEN'S WEAR). Likewise, in In re Hearst Corp., 25 USPQ2d 1238 (Fed. Cir. 1992), the Court of Appeals for the Federal Circuit concluded that the presence of the word "girl" in the applicant's mark VARGA GIRL when considering the likelihood of confusion between VARGA GIRL and VARGAS. Id. at 1239. The court observed that although "varga" and "vargas" are virtually identical, "the marks must be considered in their entireties, and all components thereof must be given appropriate weight." Id. (citing In re National Data Corp., 224 USPQ 749 (Fed. Cir. 1985); Opryland USA Inc., 23 USPQ2d at 1473). The court reasoned that "[b]y stressing the portion 'varga' and diminishing the portion 'girl,' the Board *inappropriately changed the mark.*" Id. (emphasis added). Concluding that the marks, when considered in their entireties, were "sufficiently different in sound, appearance, connotation, and commercial impression to negate likelihood of confusion in terms of § 2(d) of the Lanham Act," the court reversed the Board's refusal of registration. Id.

There are numerous other examples of cases where courts found no likelihood of confusion between trademarks that contained one similar word, since the "purchasing public will not look at only portions of the mark to determine the source of goods and services provided. In re National Data Corp., 224 USPQ at 751. Taken as a whole, and considering the differences

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between the word ALLIED in a specific typeface inscribed in a rectangle design, and the words ALLIED ELECTRONICS, the marks in their entireties clearly are not confusingly similar.

## 2. The Nature and Use of the Respective Goods

### Applicant's Goods Are Specialized

The determination of whether Applicant's goods and the goods in the Registration are sufficiently related as to cause a likelihood of confusion requires a comparison of the *specific* goods and services for the respective marks. TMEP § 1207.01(a) (iii) ("The nature and scope of a party's goods or services must be determined on the basis of the goods or services recited in the application or registration."). See, also Hewlett-Packard Co. v. Packard Press Inc., 281 F.3d 1261 (Fed. Cir. 2002); In re Shell Oil Co., 992 F.2d 1204 n. 4 (Fed. Cir. 1993); J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460 (Fed. Cir. 1991); Octocom Systems Inc. v. Houston Computer Services Inc., 918 F.2d 937 (Fed. Cir. 1990). A careful comparison of the *specific goods* in the instant application to those in the cited Registration reveals that they are *not* sufficiently related to create a likelihood of confusion as to the respective sources.

Registrant's goods are in the general "do-it-yourself" tool category, namely: "hand- and machine-tools; namely, files, drill bits, trowels, screwdrivers, pliers, wrenches, chisels, punches, saws, snips and shears, scrapers, hammers, taps and dies". See Exhibit 1. As stated on its own Web page (located at [www.mibro.com](http://www.mibro.com)), Registrant's goods are marketed "to the rapidly growing do-it-yourself market." See Exhibit 2. Applicant's goods are "hand tools for use in the electronics' industry, namely hand-held crimpers, wire cutters, lead cutters, wire strippers, extractors for electrical and computer components, tweezers, punchdown tools, blow torches and metal vices." See Exhibit 3. Moreover, in order to provide even more separation between the specific goods, Applicant has deleted from its initial trademark application's identification of

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goods all tools that overlapped Registrant's goods. Accordingly, there would be no reason to associate the source of Applicant's specialized electronic tools with the source of Registrant's general home and garden tools. In fact, that is the general consensus of consumers who operate in the specialty electronics' tools industry. See Exhibit 4 consisting of consumer declarations stating specialty electronics tools are not sold in same channels of trade as general home and garden tools.

In fact, the Court of Customs and Patent Appeals has stated as much. In Bendix Aviation Corp. v. Ardor Mfg. Co., Inc., 141 USPQ 572 (CCPA 1964), the appellate court was confronted with this exact question. Bendix Aviation Corp. ("BAC" or "Appellant") made specialty aircraft tools, while the appellee made a tool "for the ever popular 'do-it-yourselfer'". Id. at 573. In the underlying decision, the Board rejected BAC's argument that the tools of the respective parties could be used "to perform a similar function" by stating that:

[BAC's] hand tools are designed for use in servicing, maintaining, and installing specialized equipment manufactured by opposer such as diesel fuel injection pumps and nozzle holders . . . for use by technically trained individuals. Applicant's hand tool, however, is a simple gadget which is apparently designed . . . for the ever-popular 'do-it-yourselfer' and for distribution through normal retail outlets for such products."

Id. The Court of Customs and Patent Appeals affirmed the Board by stating that "[c]onsidering . . . the nature of and the differences between the hand tools of the parties . . . it is unlikely that purchasers familiar with the 'BENDIX' . . . tools will assume that [appellee's] product originates with or is in some way associated with [Appellant]". Id.

The same can be said for the instant case. Applicant's specialty tools are for use by the electronics' industry. Registrant's tools are for the general "do-it-yourselfer". It is unlikely that

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purchasers familiar with Registrant's general tools will assume that Applicant's specialty products originate with or are in some way associated with Registrant.

*Applicant's Goods Are Sold to Sophisticated Consumers*

Besides the respective goods being different, the Bendix court also relied on the fact that BAC's tools were sold to highly technical consumers. Applicant's tools are likewise sold to highly technical consumers. In determining whether confusion is likely, the Board has consistently held that the level of purchaser "sophistication is important and often dispositive because '[s]ophisticated consumers may be expected to exercise greater care.'" Electronic Design & Sales, Inc. v. Electronic Data Sys. Corp., 21 USPQ2d 1388, 1392 (Fed. Cir. 1992) (quoting Pignons S.A. de Mecanique de Precision v. Polaroid Corp., 212 USPQ 246, 252 (1st Cir. 1981))."

Furthermore, where purchasers are sophisticated, even minor differences in marks have been found to prevent confusion. See e.g., GB Elec. Inc. v. Thomas & Betts Corp., 37 USPQ2d 1177 (E.D. Wis. 1995) (no confusion likely between identical marks used in connection with electrical connectors and conduit bending tools because contractors are sophisticated and must know what products are available, and who makes them); Federal Tel. & Radio Corp. v. Fed. Television Corp., 84 USPQ 394 (2d Cir. 1950) (FEDERAL for television parts not confusing to FEDERAL for radio receivers because purchasers of television parts are sophisticated consumers).

As in the cases discussed above, the purchasers of Applicant's tools are highly skilled professionals in the electronics' industry. "It would labor the obvious to explain that no one but a 'sophisticated' buyer would ever purchase [electronics' tools]." General Controls Co. v. HI-G, Inc., 136 USPQ 570, 575 (D. Conn. 1962). By the very nature of their professions, such

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consumers who use specialized electronics' tools would be expected to exercise a high degree of discrimination in the selection of said tools and can be expected to be able to differentiate between even similar marks.

*Applicant's Goods Are Not Sold in the Same Manner as Registrant's Goods*

Courts commonly hold that differences in channels of trade are dispositive in determining likelihood of consumer confusion. See, e.g., Knaack Mfg. Co. v. Rally Accessories Inc., 42 USPQ2d 1649, 1657 (N.D. Ill. 1997) (plaintiff's sale of goods through specialty commercial distributors not in same channels of trade with defendant whose goods are sold through mass retailers). This is because consumers cannot be confused as to the source of goods if the goods are sold in different channels of trade.

Registrant's goods are sold through retail establishments to "the rapidly growing do-it-yourself market." See Exhibit 2. Applicant, in contrast, sells its tools primarily through catalog sales and via a Web site over the Internet. Tools bearing Applicant's mark are not found on the shelves of any retail store and vice versa. Applicant does not sell Registrant's do-it-yourself tools in its catalogs or over its Web site. Thus, consumers entering a retail store with the intention of purchasing Registrant's products would never see Applicant's products or marks. Likewise, consumers desiring to purchase Applicant's tools must possess Applicant's catalog or must access Applicant's Web site. *A fortiori*, consumers know exactly from whom they are purchasing. See Exhibit 4.

The same was said in A & H Sportswear Co. v. Victoria's Secret Stores Inc., 52 USPQ2d 1143, 1155 (E.D. Pa. 1999). Here the district court noted that the parties' swimsuits and brassieres were competing goods and sold through similar channels of trade. However, in concluding that THE MIRACLE BRA mark does not pose a likelihood of confusion with

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Plaintiffs' MIRACLESUIT mark, the district court also noted "that such channels would be distinguished because Defendants sell THE MIRACLE BRA swimsuits exclusively in [their own] stores and [through their proprietary] catalogue." *Id.* Such fine distinctions between the channels in which the products are sold may weigh in favor of diminishing a likelihood of confusion. *See e.g., Ivoclar N. Am. v. Dentsply Int'l Inc.*, 41 F.Supp.2d 274, 281 (S.D.N.Y. 1998) (products being marketed in different sections of the catalog is one factor in the determination that competing products are sold in different channels of trade); *Graham Webb Int'l v. Helene Curtis Inc.*, 17 F.Supp.2d 919, 929 (D. Minn. 1998) (competing hair products are not sold through the same channels because one of the products is exclusively available at professional salons).

Finally, it should be noted that the respective parties' goods have coexisted in the marketplace for over 55 years without actual confusion. Applicant's tools have been sold nationwide since 1929, while Registrant's first use is in 1949. The length of time during and conditions under which there has been concurrent use without evidence of actual confusion can be dispositive of whether there is a likelihood that consumers will be confused as to the source of two marks. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567; *Sports Authority Mich. Inc. v. PC Authority Inc.*, 63 USPQ2d 1782 (TTAB 2001). The marketplace seems to be able readily to distinguish between the two marks such that it is unlikely that any confusion will result.

For these reasons, the channels of trade for the respective goods are not similar and consumers cannot be confused as to the source of the respective goods.

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### 3. Examining Attorney's Position Is Not Based on Substantial Evidence

In the Final Office Action dated July 15, 2004, the Examining Attorney references 31<sup>1</sup> different registrations belonging to 23 different parties allegedly to show that the Applicant's goods are related to Registrant's goods. The Examining Attorney further states that seven of the attached registrations include goods that are used in connection with electronics equipment and eight of the attached registrations include goods that are used in connection with computers.<sup>2</sup>

Courts commonly state that "third-party registrations, per se, have traditionally been considered of little value as evidence in the absence of a showing of actual use of the marks therein." In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 230 USPQ 128 (TTAB 1986); see also In re Donnay Int'l, Societe Anonyme, 31 USPQ2d 195, 1955 (TTAB 1994) ("Third-party registrations are not evidence that the marks shown therein are in commercial use, or that the public is familiar with them."); In re General Motors Corp., 23 USPQ2d 1465 (TTAB 1992). Since the Examining Attorney has not shown whether any of these registrations is currently in use, they are insufficient to prove that the goods of Applicant and Registrant are related. Nonetheless, Applicant has reviewed all of the referenced registrations and asserts that not only do they not provide support for the Examining Attorney's proposition, but they actually prove quite the opposite.

<sup>1</sup> In the Final Office Action, the Examining Attorney states that she attaches "32 registrations wherein the same mark is used contemporaneously in connection with applicant's and registrant's goods." However, reference 16 for EXTREME TORQUE CORP. (Serial No. 78/319051) has not registered as of the time Applicant submitted this Appeal Brief, so it is of no support and Applicant will not comment on it.

<sup>2</sup> Based on the referenced registrations, it is unclear whether the Examining Attorney comprehends that there is a difference between specialized tools for use in the electronics' industry as opposed to tools sold in Home Depot<sup>®</sup>. Applicant's tools are specifically designed for use with electronics devices. They are visually and functionally different from general home and garden hand tools. For example, some of Applicant's tools are constructed so as to operate in a clean room environment in conjunction with subminiature assembly work.



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Indeed, the cited third-party registrations can be divided into two groups: (i) tools used for general home and garden repairs (20 marks), and (ii) specialty tools for use in the electronics' industry (9 marks). See Exhibit 5. The Examining Attorney seems to suggest by these third-party registrations that all tools are sold to all consumers, wherein reality, a closer look at the registrations shows the opposite. None of the referenced registrations for tools used for general home and garden repairs contain specialty tools for use in the electronics' industry and vice versa. This is because they are discrete trade channels. Consequently, the referenced registrations actually support Applicant's contention that there is no likelihood of confusion between the marks in question.

## II. CONCLUSION

Applicant's mark and goods are notably different from the mark and goods in the cited Registration. These differences lead to the conclusion that no appreciable number of consumers would be confused that Applicant's tools might come from Registrant. Consequently, the Board should reverse the refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), and allow Applicant's mark to publish for opposition.

Respectfully submitted,

Date: November 4, 2004

By: 

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**EXHIBIT 1**

This is Exhibit 1 to Applicant's Ex Parte Appeal Brief in Favor of Registration.

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Original Filing Basis 1A

Registration Number 0568267

Registration Date December 23, 1952

## TESS - Document Display

Page 2 of 2

**Owner** (REGISTRANT) BELF & LUSTIG CORPORATION NEW YORK 145 CHAMBERS STREET  
NEW YORK NEW YORK

(LAST LISTED OWNER) MIBRO GROUP, L.C. LIMITED LIABILITY COMPANY BY  
ASSIGNMENT FLORIDA 6010 N BAILEY AVE AMHERST NEW YORK 14226

**Assignment  
Recorded** ASSIGNMENT RECORDED

**Attorney of  
Record** RANDI S MILLER

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Affidavit Text** SECT 15. SECTION 8(10-YR) 20021223.

**Renewal** 3RD RENEWAL 20021223

**Live/Dead  
Indicator** LIVE

PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	Browse Doc	TOP	HELP	PREV LIST	CURR LIST	NEXT LIST
FIRST DOC	PREV DOC	NEXT DOC	LAST DOC								

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CONTACT US | PRIVACY STATEMENT

In re Allied Electronics, Inc.:  
Serial No. 78/132209

**EXHIBIT 2**

This is Exhibit 2 to Applicant's Ex Parte Appeal Brief in Favor of Registration.

About the Mibro Group

## About The MIBRO Group

For over half a century, The MIBRO Group has been a supplier of quality hardware, hand tools and power tool accessory products. Established in 1946, the company has evolved from a small Montreal firm specializing in European hardware to the large and diversified Toronto based hardware supplier it is today. Since 1991, Buffalo, New York has been home to The MIBRO Group, L.C., our U.S. company serving customers across America.

A 1989 move to a new warehouse and office complex in Toronto facilitated the streamlining of operations, reduced order turn-around times and gave MIBRO the ability to carry significantly larger inventories. The company now had the means and flexibility to meet, and anticipate, changing customer requirements. By establishing an in-house graphic design studio and expanding our packaging operation, MIBRO had the capacity to increase the volume of bulk product that could be custom packaged for retail sale. Today, our packaging capability has expanded further and in both Canada and the United States our ability to meet our customers' unique packaging requirements remains a key strength.

In 1991, The MIBRO Group expanded its operations into the United States through the acquisition of Allied Specialty and manufacturing, an established company in the power tool accessory business serving mainly industrial and construction trade customers. Relocated to Buffalo and brought in under the MIBRO name, our U.S. company has diversified its client base and now provides a range of hardware products to the rapidly growing do-it-yourself market.

In 1993, MIBRO was honored by being named a winner of the Arthur Andersen / Financial Post award as one of the Fifty Best Managed Private Companies in Canada. A number of reasons were cited for MIBRO capturing this prize. The award recognized MIBRO's sophisticated computer applications and assists to customers, our focused corporate objectives and strategies, and the aggressive posture we had taken with regard to penetrating the U.S. market.

Today, MIBRO is a recognized leader in the North American hardware industry. Significant time, energy and financial resources continue to be directed toward product line enhancements and refinements. Customer needs become objectives, new sources of supply are explored and evaluated, and competitive market opportunities are capitalized. Consumer-oriented marketing support helps to group products into programs and programs into the well-merchandised image we display at retail. MIBRO is in the continuous process of being a contemporary organization prepared to meet the demands of an ever-changing marketplace.

In re Allied Electronics, Inc.:  
Serial No. 78/132209

**EXHIBIT 3**

This is Exhibit 3 to Applicant's Ex Parte Appeal Brief in Favor of Registration.



## UNITED STATES PATENT AND TRADEMARK OFFICE

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## Trademark Electronic Search System(Tess)

TESS was last updated on Wed Oct 13 04:42:08 EDT 2004

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FIRST DOC	PREV DOC	NEXT DOC	LAST DOC								

**Logout:** Please logout when you are done to release system resources allocated for you.

**Start** List At:  OR **Jump** to record:  **Record 1 out of 9**

**Check Status**

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

**Typed Drawing****Word Mark** ALLIED ELECTRONICS

**Goods and Services** IC 008. US 023 028 044. G & S: Hand tools for use in the electronics' industry, namely hand-held crimpers, wire cutters, lead cutters, wire strippers, extractors for electrical and computer components, tweezers, punchdown tools, blow torches and metal vices. FIRST USE: 19290000. FIRST USE IN COMMERCE: 19290000

**Mark Drawing Code** (1) TYPED DRAWING

**Serial Number** 78132209**Filing Date** May 30, 2002

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Owner** (APPLICANT) Allied Electronics Inc. CORPORATION DELAWARE 7410 Pebble Drive Fort Worth TEXAS 76118

**Attorney of Record** Eric J. von Vorys

**Prior Registrations** 2271634

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ELECTRONICS" APART FROM THE MARK AS SHOWN

**Type of Mark** TRADEMARK**Register** PRINCIPAL**Live/Dead**



## TESS - Document Display

Page 2 of 2

Indicator LIVE

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PTO HOME	TRADEMARK	TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE LIST	TOP	HELP	PREV LIST	CURR LIST	NEXT LIST
FIRST DOC	PREV DOC	NEXT DOC	LAST DOC								

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CONTACT US | PRIVACY STATEMENT

In re Allied Electronics, Inc.:  
Serial No. 78/132209

**EXHIBIT 4**

This is Exhibit 4 to Applicant's Ex Parte Appeal Brief in Favor of Registration.

Oct 22 03 10:24a

Windhorst Elect Svc Inc

01/11/05-02/11

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of:

ALLIED ELECTRONICS, INC.

Serial No.: 78/132209

Examining Attorney Barbara Brown  
Law Office 116

Filed: May 30, 2002

Mark: ALLIED ELECTRONICS

**DECLARATION**

I, Michael D. Windhorst, declare and state as follows based upon personal information:  
(Name)

1. I am President of Windhorst Electrical Service, Incorporated.  
(Title) (Company Name)
2. I am employed in the electronic industry and have extensive experience in this field.
3. Allied Electronics, Inc. distributes specialized hand tools for use in the electronics' industry under the name ALLIED ELECTRONICS.
4. There is a recognized difference between specialized hand tools for use in the electronics' industry and general hand tools for do-it-yourselfers.
5. It is commonly held that specialized hand tools for use in the electronics industry are sold in different markets from general hand tools for do-it-yourselfers.
6. I am not aware of any hardware store that sells general hand tools for do-it-yourselfers that also contains specialized hand tools for use in the electronics' industry.

Oct 22 03 10:24a

W. J. Gdhorst Elect Svc Inc

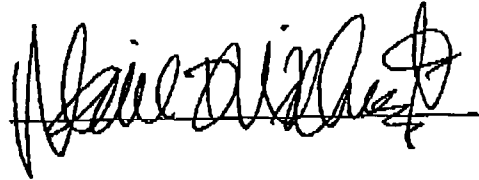
817-540-0271

7. I am also aware that the term ALLIED is a commonly used term to designate tool manufacturers' and distributors' respective lines with or without other terms, designations or designs.

AND I MAKE this solemn declaration conscientiously believing the same to be true under penalty of perjury.

Dated: October 22, 2003

By:



G:\127\TTAB\Allied Electronics\Affidavit1.doc

RECEIVED TIME OCT 27 0.00AM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:

ALLIED ELECTRONICS, INC.

Serial No.: 78/132209

Filed: May 30, 2002

Mark: ALLIED ELECTRONICS

Examining Attorney Barbara Brown  
Law Office 116

DECLARATION

I, Susan Briggs, declare and state as follows based upon personal information:  
(Name)


1. I am Planner/Buyer of Probe Technology Services  
(Title) (Company Name)
2. I am employed in the electronic industry and have extensive experience in this field.
3. Allied Electronics, Inc. distributes specialized hand tools for use in the electronics' industry under the name ALLIED ELECTRONICS.
4. There is a recognized difference between specialized hand tools for use in the electronics' industry and general hand tools for do-it-yourselfers.
5. It is commonly held that specialized hand tools for use in the electronics industry are sold in different markets from general hand tools for do-it-yourselfers.
6. I am not aware of any hardware store that sells general hand tools for do-it-yourselfers that also contains specialized hand tools for use in the electronics' industry.



7. I am also aware that the term ALLIED is a commonly used term to designate tool manufacturers' and distributors' respective lines with or without other terms, designations or designs.

AND I MAKE this solemn declaration conscientiously believing the same to be true under penalty of perjury.

Dated: 10/22, 2003

By: 

GA127\TTAB\Allied Electronics\Affidavit1.doc

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:

ALLIED ELECTRONICS, INC.

Serial No.: 78/132209

Filed: May 30, 2002

Mark: ALLIED ELECTRONICS

Examining Attorney Barbara Brown  
Law Office 116

DECLARATION

I, CODA GRIFFAY, declare and state as follows based upon personal information:  
(Name)

1. I am OWNER of GRIFFAY ELECTRICAL SERVICES LLC  
(Title) (Company Name)
2. I am employed in the electronic industry and have extensive experience in this field.
3. Allied Electronics, Inc. distributes specialized hand tools for use in the electronics' industry under the name ALLIED ELECTRONICS.
4. There is a recognized difference between specialized hand tools for use in the electronics' industry and general hand tools for do-it-yourselfers.
5. It is commonly held that specialized hand tools for use in the electronics industry are sold in different markets from general hand tools for do-it-yourselfers.
6. I am not aware of any hardware store that sells general hand tools for do-it-yourselfers that also contains specialized hand tools for use in the electronics' industry.

7. I am also aware that the term ALLIED is a commonly used term to designate tool manufacturers' and distributors' respective lines with or without other terms, designations or designs.

AND I MAKE this solemn declaration conscientiously believing the same to be true under penalty of perjury.

Dated: 10-22, 2003

By: 

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:

ALLIED ELECTRONICS, INC.

Serial No.: 78/132209

Filed: May 30, 2002

Mark: ALLIED ELECTRONICS

Examining Attorney Barbara Brown  
Law Office 116

DECLARATION

I, Kelly Dean, declare and state as follows based upon personal information:  
(Name)

1. I am service tech of GRIFFAY Electric.  
(Title) (Company Name)
2. I am employed in the electronic industry and have extensive experience in this field.
3. Allied Electronics, Inc. distributes specialized hand tools for use in the electronics' industry under the name ALLIED ELECTRONICS.
4. There is a recognized difference between specialized hand tools for use in the electronics' industry and general hand tools for do-it-yourselfers.
5. It is commonly held that specialized hand tools for use in the electronics industry are sold in different markets from general hand tools for do-it-yourselfers.
6. I am not aware of any hardware store that sells general hand tools for do-it-yourselfers that also contains specialized hand tools for use in the electronics' industry.

7. I am also aware that the term ALLIED is a commonly used term to designate tool manufacturers' and distributors' respective lines with or without other terms, designations or designs.

AND I MAKE this solemn declaration conscientiously believing the same to be true under penalty of perjury.

Dated: 10-22, 2003

By: 

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M : Advanced Microcontrols

FAX NO. : 8175950070

Oct. 23 2003 10:31AM P1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:

ALLIED ELECTRONICS, INC.

Serial No.: 78/132209

Examining Attorney Barbara Brown  
Law Office 116

Filed: May 30, 2002

Mark: ALLIED ELECTRONICS

## DECLARATION

I, Gregory L. Horne, declare and state as follows based upon personal information:  
(Name)

1. I am President of Advanced Microcontrols, Inc.  
(Title) (Company Name)
2. I am employed in the electronic industry and have extensive experience in this field.
3. Allied Electronics, Inc. distributes specialized hand tools for use in the electronics' industry under the name ALLIED ELECTRONICS.
4. There is a recognized difference between specialized hand tools for use in the electronics' industry and general hand tools for do-it-yourselfers.
5. It is commonly held that specialized hand tools for use in the electronics industry are sold in different markets from general hand tools for do-it-yourselfers.
6. I am not aware of any hardware store that sells general hand tools for do-it-yourselfers that also contains specialized hand tools for use in the electronics' industry.

Oct. 23 2003 10:32AM P2

FROM : Advanced Microcontrols

FAX NO. : 8175950070

7. I am also aware that the term ALLIED is a commonly used term to designate tool manufacturers' and distributors' respective lines with or without other terms, designations or designs.

AND I MAKE this solemn declaration conscientiously believing the same to be true under penalty of perjury.

Dated: 10, 23, 2003

By: 

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In re Allied Electronics, Inc.:  
Serial No. 78/132209

**EXHIBIT 5**

This is Exhibit 5 to Applicant's Ex Parte Appeal Brief in Favor of Registration.

**REFERENCED REGISTRATIONS**

1. **DATAWARE** (Reg. No. 2,540,689) is registered in Class 8 for manually operated hand tools for assembling and disassembling computer equipment, comprising microchip inserters, screwdrivers, nutdrivers, etc. **None of the tools in the list cover general home and garden tools.**
2. **VANTAGE** (Reg. No. 2,033,366) is registered in Class 8 for tool kits used for home and office repair, servicing and maintenance of electronic equipment, computers and telecommunication equipment consisting primarily of hammers, driver blade handles, etc. **None of the tools in the list cover general home and garden tools.**
3. **DIAMOND** and design (Reg. No. 1,680,980) is registered in Class 8 for hand tools; namely, adjustable wrenches, all types of pliers, wrench sets and cases, etc. **None of the tools in the list cover tools in the electronics' industry.**
4. **QUINTAR** and design (Reg. No. 1,368,680) is registered in Class 8 for hand tools – namely crimpers, pliers, wire cutters and wire strippers for installing electronic devices. **None of the tools in the list cover general home and garden tools.**
5. **GC/WALDOM ELECTRONICS** (Reg. No. 2,713,770) is registered in Class 8 for hand operated hand tools for use with electronics, namely wire strippers, wirecutters, etc. **None of the tools in the list cover general home and garden tools.**
6. **GC PROFESSIONAL** (Reg. No. 2,247,962) is registered in Class 8 for hand tools for electronics, namely, pliers, wire cutters, screwdrivers, etc. **None of the tools in the list cover general home and garden tools.**
7. **GC TOOL** (Reg. No. 2,117,276) is registered in Class 8 for hand tools for use with electronics, namely, wire strippers; nut drivers and screw driver sets; etc. **None of the tools in the list cover general home and garden tools.**
8. **STEREN** and Design (Reg. No. 2,484,116) is registered in Class 8 for cable strippers, crimp tools, coax crimp tools, wire cutters, pliers, etc. **None of the tools in the list cover general home and garden tools.**
9. **COMPUTER DOCTOR BAG** (Reg. No. 2,219,597) is registered in Class 8 for computer tool kit, namely needle nose pliers with cutting side, chip inserter/pin straightener, etc. **None of the tools in the list cover general home and garden tools.**
10. **ER** (Reg. No. 2,080,713) is registered in Class 8 for tools, namely, solder pins, solder wicks, screwdrivers, soldering stands, crimping tools, computer insertion/extraction tools, long-nose pliers, diagonal-cut pliers, bent-nose pliers, wire strippers. **None of the tools in the list cover general home and garden tools.**

11. **ELECTRONIC RESOURCES LTD.** (Reg. No. 2,229,816), is registered in Class 8 for tools, namely, solder pins, solder wicks, screwdrivers, soldering stands, crimping tools, computer insertion/extraction tools, long-nose pliers, diagonal-cut pliers, bent-nose pliers, wire strippers. **None of the tools in the list cover general home and garden tools.**
12. **PENGO COMPUTER ACCESSORIES** (Reg. No. 2,115,030) is registered in Class 8 for tool kits comprised of nut drivers, retriever, tweezers, screwdrivers, circuit extractor, etc. **None of the tools in the list cover general home and garden tools.**
13. **COMPU KIT** (Reg. No. 1,929,419) is registered in Class 8 for hand operated computer tool kits comprising IC inserter, IC extractor, etc. **None of the tools in the list cover general home and garden tools.**
14. **CONTACT EAST** (Reg. No. 1,545,126) is registered in Class 8 for precision hand operated tools, tool kits and implements, namely, drills, drivers, hacksaws, saw sets, hammers, torque tools, etc. **None of the tools in the list cover tools in the electronics' industry.**
15. **KANGAROO Design** (Reg. No. 1,395,511) is registered in Class 8 for hand tool kits comprising alignment tools, burnishers, driver blades, etc. **None of the tools in the list cover tools in the electronics' industry.**
16. **EXTREME TORQUE CORP** (Serial No. 78/319051) is not registered yet.
17. **COLUMBIAN** (Reg. No. 2,838,438) is registered in Class 8 for a full line of hand tools for automotive, plumbing, carpentry, workshop and industrial use, namely, vises, clamps, screwdrivers, etc. **None of the tools in the list cover tools in the electronics' industry.**
18. **NEBO** (Reg. No. 2,833,286) is registered in Class 8 for hand tools, namely hammers, ratchet wrenches, screwdrivers, socket wrenches, etc. **None of the tools in the list cover tools in the electronics' industry.**
19. **AT WORK WITH PROFESSIONAL EVERY DAY** (Reg. No. 2,826,281) is registered in Class 8 for hand operated slitters; hand-held, scissor-type crimpers; hand tools, namely wire and cable cutters, etc. **None of the tools in the list cover tools in the electronics' industry.**
20. **EMERSON MOTOR TECHNOLOGIES** (Reg. No. 2,834,971) is registered in Class 8 for hand tools and replacement parts therefor, namely socket wrenches, socket wrench sets, socket wrench kits, etc. **None of the tools in the list cover tools in the electronics' industry.**
21. **TOOL TIME** (Reg. No. 2,710,920) is registered in Class 8 for manually powered hand tools, namely screwdrivers, pliers, sockets, ratchets, etc. **None of the tools in the list cover tools in the electronics' industry.**

22. **SHOP SOURCE** (Reg. No. 2,733,300) is registered in Class 8 for hand-operated tools and accessories, namely screwdrivers, wrenches, pliers, etc. **None of the tools in the list cover tools in the electronics' industry.**
23. **DELTA** (Reg. No. 2,780,520) is registered in Class 8 for tool aprons; tool belts; bits; blades for hand saws, etc. **None of the tools in the list cover tools in the electronics' industry.**
24. **HANDI WORKS** (Reg. No. 2,780,573) is registered in Class 8 for manually operated hand tools, namely screwdrivers, wrenches, hammers, etc. **None of the tools in the list cover tools in the electronics' industry.**
25. **IDEAL** (Reg. No. 2,813,477) is registered in Class 8 for hand tools for wire and cable installation, namely, fish tape pullers, conduit benders and handles, pull line carriers for attachment to cable or wire pulling rope to serve as piston for traveling through a conduit, wire strippers, wire cutters, etc. **None of the tools in the list cover tools in the electronics' industry.**
26. **PALADIN** (Reg. No. 2,829,116) is registered in Class 8 for hand tools, namely, wire cutters, wire installation strippers, wire slitters, etc. **None of the tools in the list cover tools in the electronics' industry.**
27. **MISCELLANEOUS DESIGN** (Reg. No. 2,829,116) is registered in Class 8 for hand tools, namely, wrenches, star drivers, nut drivers, caulking guns, wrecking and pry bars, punches, sockets, etc. **None of the tools in the list cover tools in the electronics' industry.**
28. **DATASHARK** (Reg. No. 2,689,295) is registered in Class 8 for hand tools, namely, wire cutters, wire installation strippers, wire slitters, etc. **None of the tools in the list cover tools in the electronics' industry.**
29. **CHANNELLOCK** (Reg. No. 2,642,163) is registered in Class 8 for manually-operated hand tools, namely, pliers, diagonal cutters, end cutters, nippers, etc. **None of the tools in the list cover tools in the electronics' industry.**
30. **TRIUMPH TWIS DRILL and Design** (Reg. No. 2,623,905) is registered in Class 8 for taps, dies, tap wrenches, die stocks, screw extractors, etc. **None of the tools in the list cover tools in the electronics' industry.**
31. **GREAT NECK** (Reg. No. 2,555,164) is registered in Class 8 for hand tools; namely wrenches; star drivers; nut drivers; saw horse brackets, etc. **None of the tools in the list cover tools in the electronics' industry.**



32. **VALUE MASTER TOOL** (Reg. No. 2,753,530) is registered in Class No. 8 for hand-operated tools and accessories, namely, screwdrivers, wrenches, pliers, socket and socket accessories, etc. **None of the tools in the list cover tools in the electronics' industry.**
33. **DOCK SIDE** (Reg. No. 2,194,892) is registered in Class 8 for manually operated hand tools, sold as a unit in sets of any combination of the following hand tools, namely, pliers, wrenches, measuring tapes, screwdrivers, etc. **None of the tools in the list cover tools in the electronics' industry.**

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